

REMARKS:Status

After entry of this response, claims 1 to 25 are pending. Claims 1, 4, 10, 13, 19 and 21 have been amended, and claims 23 to 25 have been added. Claims 1, 4, 10, 13, 19, 21 and 23 are the independent claims. Reconsideration and further examination are respectfully requested.

Claim Rejections

Claims 1 to 22 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 2,723,396 (Stack) in view of U.S. Patent No. 3,968,803 (Hyman). U.S. Patent No. 4,384,583 (Speelman) was also discussed in the Office Action.

Discussion of Rejections

Applicants note that every independent claim in the present application recites the feature that “at least part of the strap is sufficiently elastic so as to ensure a close fit, but is also sufficiently inelastic so that the restraint avoids contributing to movement of the breasts during exercising.” The Office Action indicated that Stack disclosed a restraint that is “elastic and inelastic as claimed.” Applicants respectfully do not see any such teaching in Stack.

In more detail, Stack discloses a “body muscle supporter” that is “especially useful in the support of the chest for assisting in the alleviation of pain in case of fractured ribs,

pleurisy or other chest distresses whether they result from injuries or some disease.” Stack, col. 1, lines 15 to 21. Stack also discloses that its device “may be used for support of any part of the body such as the abdomen or the like and may be used to alleviate pain from injuries, various diseases and congestions of the body cavity as well as post-operative support.” Stack, col. 2, lines 28 to 32. Applicants see no mention of exercise in Stack and thus no mention of avoiding contribution to movement of breasts during exercising. In this regard, Applicants note that a too elastic strap will contribute too such movement, while a too inelastic strap will not fit closely enough to work.

The other references discussed in the Office Action are not seen by Applicants to add anything to remedy the foregoing deficiencies of Stack. In particular, Hyman concerns a “surgical chest dressing” and Speelman concerns a “tourniquet.” Applicants respectfully submit that none of these references implicates the elasticity requirement of the claimed invention that relate to exercising.

#### Objective Evidence of Nonobviousness

Applicants acknowledge that the present invention appears to be extremely simply and even obvious in hindsight. However, the invention has at least one property that strongly militates against a holding of obviousness – namely, the invention works.

Painful breast movement is a longstanding and recurring problem for female runners and athletes. In support of this statement, Applicants offer the attached article from

“Women’s Running” and the attached discussion from an online group at [www.doitsports.com](http://www.doitsports.com).

Other articles and documents that discuss this recurring problem exist.

The enclosed documents discuss several important facts. Both the article and the discussion group highlight the difficulty of finding appropriate sports bras to help with this problem. Both discuss having to try multiple bras to find a good fit. Both note problems with chaffing and discomfort. The discussion group mentions using two bras in order to achieve sufficient support. Clearly, sports bras are a less-than-perfect solution to the problems faced by female runners and athletes. Furthermore, finding the correct sports bra(s) for a particular runner is a problem in its own right.

In contrast, the invention offers a simple, adjustable, and easily selected solution. Applicant Natalie Noel has found this solution to be extremely effective, far more so than even two sports bras. Applicants realize that a mere statement by an Applicant may not be convincing in this context. Accordingly, Applicants are enclosing herewith a video tape with a demonstration of the effectiveness of the invention under the trade name “Bounce Buster.” Applicants respectfully and earnestly request that the Examiner review this short video and consider the effectiveness of the Bounce Buster™ in addressing the long-standing problem of uncomfortable breast movement during exercising.

As should be readily apparent from the very simplicity of the Bounce Buster™, little effort would be required to identify and to purchase an appropriately-sized Bounce Buster. This is in contrast to the problems faced by runners and athlete when trying to find a properly fitting sports bra or bras.

Because the invention provides a superior and effective solution to long-felt but unsolved problems, namely the problems of effectiveness, comfort, fit, and sizing of sports bras, Applicants submit that the claimed invention should be considered nonobvious over previous devices. See MPEP 716.01 (regarding objective evidence of nonobviousness).

Applicants note that little progress has been made in commercializing the Bounce Buster™. However, this lack of progress stems from business, funding, and/or personal issues unrelated to the effectiveness of the Bounce Buster™ itself. Accordingly, Applicants submit that the lack of commercial success as yet should not be considered an indication of ineffectiveness or obviousness.

#### Declaration

To the extent necessary, Applicant Dane C. Butzer, whose signature appears below, requests that this paper be considered a declaration of the veracity of any relevant facts concerning the invention discussed herein or in the accompanying video tape.

Applicant Dane C. Butzer acknowledges that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. All statements made of Applicant Dane C. Butzer's own knowledge are true and all statements made on information and belief are believed to be true. See 37 C.F.R. 1.68 and MPEP 715.04.

New Use

Even if the structure of Applicants' restraint is not considered to be novel and nonobvious, Applicants respectfully submit that use of the restraint as an aide for exercising is novel and nonobvious over the applied art. In this regard, Applicant notes that 35 U.S.C. § 100 defines a (patentable) process to include "a new use of a known process, machine, manufacture, composition of matter, or material." Thus, Applicants have added new claim 23, which reads as follows:

23. A method comprising the step of  
using a device to reduce breast movement while a person exercises,  
said device including a strap that fits across tops of the person's breasts,  
under the person's arms, and around the person's back, and an adjustable  
fastener that is for fastening the strap together and that is disposed to be  
positioned at the person's back, wherein at least part of the strap is  
sufficiently elastic so as to ensure a close fit, but is also sufficiently  
inelastic so that the restraint avoids contributing to movement of the  
breasts during exercising or other activities.

In more detail, the references cited in the Office Action include a body muscle supporter "useful in the support of the chest for assisting in the alleviation of pain in case of fractured ribs, pleurisy or other chest distresses whether they result from injuries or some disease" (Stack), a "surgical chest dressing" (Hyman), and an actual "tourniquet" (Speelman). Stack also mentions that its device "may be used for support of any part of the body such as the abdomen or the like and may be used to alleviate pain from injuries, various diseases and congestions of the body cavity as well as post-operative support" (col. 2, lines 28 to 32). None of these uses appears to Applicants to even remotely suggest using an "elastic tourniquet type

restraint,” as the claimed invention was characterized in the Office Action, “to reduce breast movement while a person exercises,” as recited by new claim 23.

Applicants respectfully note that claim 25 recites the more limited case in which the device “consists essentially of the strap and the adjustable fastener.” The uses of such a simple and limited device “to reduce breast movement while a person exercises” is believed to be completely new.

In view of the foregoing, the new uses recited by claims 23 to 25 are believed to be novel, nonobvious, and allowable over the art of record. Allowance of these claims is therefore respectfully requested.

Closing

In view of the foregoing amendments and remarks, the entire application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner’s earliest convenience.

Applicants’ undersigned attorney, who is also one of Applicants, can be reached at (614) 486-3585. All correspondence should continue to be directed to the address indicated below.

Respectfully submitted,



Dane C. Butzer  
Reg. No. 43,521

Dated: February 2, 2004

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## Reader Poll

Who's your pick to win the U.S. Men's Marathon Trials?

- ☐ A) Alan Culpepper, 2:09:41
- ☐ B) Meb Keflezighi, 2:10:03
- ☐ C) Dan Browne, 2:11:35
- ☐ D) Eddy Hellebuyck, 2:12:46
- ☐ E) Jimmy Heard, 2:12:51
- ☐ F) Rod DeHaven, 2:13:18
- ☐ G) Keith Dowling, 2:13:28
- ☐ H) Kyle Baker, 2:14:13
- ☐ I) Brad Hauser, 2:14:15
- ☐ J) Clint Verran, 2:14:17
- ☐ K) Ryan Shay, 2:14:29
- ☐ L) Peter De La Cerda, 2:14:41

## In Search of the Perfect Sports Bra

by Eileen Portz-Shovlin

We wanted breathability, comfort and support. Here's what we found

Whether a woman runner is small, medium or large breasted, a sports bra is her most important piece of apparel, and it must be right for her. The breasts are suspended by very weak ligaments that stretch easily.

During running, breasts bounce with each footstrike, and this repeated action accelerates permanent stretching of the skin and sagging. Though small-breasted women don't experience as much bouncing as large-breasted women during vigorous exercise such as running, experts agree that all women runners should wear a sports bra.

But finding the right bra isn't easy. Besides providing enough support, a sports bra should feel comfortable mile after mile. A good sports bra doesn't chafe around the armholes or ribcage. The straps don't dig into the shoulders. The band beneath the breasts shouldn't bind or abrade. And a good sports bra wicks moisture from your skin so your breasts don't feel like they're baking.

Fit is crucial, too. "Most women don't even know their size," says Effraim Nathan, president of the Lontex Corporation, who's been in the intimate apparel business for 26 years. "Fitting a sports bra is as important as fitting a shoe."

A sports bra that fits well will feel snug but not tight. "Clap your hands over your head, and if the elastic band of the bra moves up, it doesn't fit properly," says Nathan. "Also, the best running bras should have at least 25 percent Lycra for a comfortable horizontal stretch. Anything less than that won't compress the breasts sufficiently."

There are two types of sports bras: compression and encapsulation. The compression design presses both breasts against the chest wall in a single mass. While the compression sports bra works well for small- to medium-breasted women, large-breasted women often find that their breasts bounce too much. These women do better with an encapsulation sports bra, the kind that supports and holds each breast separately in a sturdy cup.

No matter how supportive or breathable the bra, you'll never want to wear it again if it isn't comfortable. That means you've got to try them on and use them.

## Tried-and-True Tips

Follow these steps to find the right sports bra and keep it in top shape.

Try on several styles and do a few exercises to see how each garment moves and feels. Jump up and down or run in place to test for support and comfort.

Look for breathable fabrics such as CoolMax® and Supplex®/Lycra® they

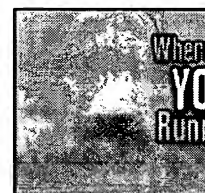
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M) Josh Cox,  
2:15:01

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wick moisture away from the skin and have a gentle, supportive stretch. Always avoid sports bras with snaps, hooks or zippers. They can make your run very uncomfortable and leave nasty marks on your skin.

If for some reason the seams of your favorite sports bra chafe your skin, try wearing the garment inside out so there are no rough edges.

Once you find the right sports bra, it's important to take care of it properly. Hang your bra on a line to air-dry after washing. Machine drying destroys the elasticity and support of the Lycra® found in most sports bras.

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**Question for the Ladies, or possibly some Men.**

Do It Sports Network : Do It Sports Network Discussion Forums : The Virtual Training Community : One Thread

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This is really a question from a co-worker. His wife had breast implants 5 weeks ago, which increased her size to 36C and she ran for the first time yesterday and experience some problems with bouncing, which caused some soreness. Any suggestions on what she could wear?

-- Patrick Seidel, August 27, 2003

**Answers**

As a 36C/38B gal, I feel qualified to answer this. I'm very choosy about my sportsbras and have found that the pull over the head kind from RoadrunnerSports to be the best. They are not too expensive (about \$25-30) and could only be more powerful if they came with battery power. I wear the medium on days when I need extra support and large otherwise. The only downside to this style is that you have to pull them on and off over your head and this can be a challenge at the end of a long run when you are a tad weak. (I've even had to get my husband to pull mine off - not a pretty sight after a 20 miler.)

Another suggestion - have your friend wear 2 bras at once.

Happy running,

-- Tamara "Captain Canada" Paton, August 27, 2003

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If she has a good running store nearby (or even a Sportmart or Copelands), she should take a bunch of bras into a dressing room, try them on and jump up and down to see if they do the job. Anything with skinny spaghetti straps won't work. The more coverage, the more support. And yes, two bras can be a last resort, but it's not very comfortable, especially on hot days.

Right now my faves are the Nike crossback bra and the Champion Shape 2000 bra (it has some structure, which helps a lot).

-- Ariel Parrish, August 27, 2003

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Check out Road Runner Sports. I had to find a good support bra when I was nursing-it was a hook in the back with padded shoulder straps and worked well.

-- kyle elizabeth knight, August 27, 2003

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Alas, Mr. Seidel, I do not have this problem thus no knowledge to share.

(I could, however, tell you about a woman I know whose "Ds" would get pinched under her elbow when she rolled over in bed, but that would be a different thread altogether.)

-- deidre "D-Wes" wesley, August 27, 2003

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Wow... five honest-to-goodness, useful, well-intended responses to this question, and nary a boob-related wisecrack. That has to be some kind of record. Clearly, Julio hasn't clicked into this thread yet.

Good then.

-- Greg Rodriguez, August 28, 2003

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And along with a good bra.. I would suggest she purchase some type of product to help with chafing! The continued up and down bounce usually makes the top edge of the bra rub alot on longer runs... owie! I'm speaking from experience!

-- Lori Hauswirth, August 28, 2003

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I'll stay quiet on this one.

-- Rick "Iceman" Neal, August 28, 2003

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Why is she running 5 weeks out from a boob job? Don't those things need time to settle?

-- Bridgette Frazier, August 28, 2003

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She should check out Title 9 Sports ([www.title9sports.com](http://www.title9sports.com)). They have an extensive selection of running bras and rate them as to how much control and support each has. There's one called the "Frog Bra" that is advertised as the most supportive sportsbra on the market, but I'm not speaking from personal experience.

-- Bernice Torregrossa, August 28, 2003

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My daughter has large implants and she just wears two jog bras. She seems to get along okay. She does use a ton of Glide around all the possible rub-spots.

-- PaulaSue Russell, August 28, 2003

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**A T-shirt with the motto, "Bring 'em on!"**

-- Hal Higdon, August 28, 2003

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Why would a runner get a boob job?

-- Lynnie Zuback, August 28, 2003

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Patrick, this is a good question. Please e-mail me some detailed photos and I will make my best assessment of the situation. If you prefer, I can be flown to Chicagoland to inspect in person. In fact, I think this would be best...

Hope I can help!

-- Dave "Julio" Russ, August 28, 2003

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By the way, on behalf of the men of the world, please tell her "thank you!"

-- Dave "Julio" Russ, August 28, 2003

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Julio, that may be best, but Patrick lives in Phoenix, so I assume the co-worker may as well. That's alright, when you get to Chicago, just hold up a sign that reads, "Looking for Runner with Implants."

-- Russ Allwein, August 28, 2003

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Thanks everyone for responding. I really appreciate it. I'll will pass on your recommendations and comments.

-- Patrick Seidel, August 28, 2003

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My friend has the same problem. Can anyone help?



-- Bob Kujawski, August 28, 2003

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I think this is what you meant to post, Bob. Cute.

-- D a V e N e L s O n, August 28, 2003

Contribute an answer